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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/667,391
Filing Date: September 20, 2000
Appellant(s): ELISCU, A. MAXWELL

Callie M. Bell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 6, 2008 appealing from the Office action mailed September 11, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Wilkinson: US Pub No. 2001/0049646 A1

Kleinberg: US Pub. No. 2001/0037265 A1

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 5, 8-12, 14-17, 19-35, 37-52, 54, 56-64 and 66-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Newly amended language cites “providing operations which can be performed by the referral, the operations associated with managing a commercial transaction”. It is unclear how a referral provides operations. For purposes of examination, Examiner will assume operations are performed by a party or a party using a computer system. The next lines of “capturing data access information associated with what data is accessed by the referral using the provided operations” is also unclear. For purposes of examination, Examiner will interpret this to mean capturing data associated with a referral.

Claims 1-3, 5, 8-12, 14-17, 19-35, 37-52, 54, 56-64 and 66-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson (U.S. 2001/0049646), and further in view of US Pub. No. 2001/0037265 A1 to Kleinberg.

Wilkinson discloses a system and method comprising:

- Receiving a referral from the referring party, the referral including information regarding any one of a financing-seeking party that has been declined by the referring party, a transaction-management seeking party, a trade-seeking party, and a credit-guarantee seeking party (abstract; paragraph [0006]);
- Storing the information regarding the referral in a storage device (“first demander”, abstract; [0008-0011]).
- Wherein the referral is received from a credit processing center of a financial institution ([0017] and [0040]);
- Determining whether the referral satisfies system-based parameters (fig. 1);
- If the referral party does not satisfy system based parameters, further comprising forwarding information regarding the referral to a third party (fig. 1, steps 120-130);
- Means for receiving a referral from a referring party, the referral including information regarding any one of a financing-seeking party that has been declined by the referring party, a transaction management-seeking party,

a trade credit-seeking party, and a credit guarantee-seeking party (fig. 1, steps 40-170);

- Evaluating the referral to determine regarding the referral in a storage device (claim 21);
- Evaluating the referral to determine whether the referral meets system-determined underwriting criteria, the system-determined underwriting criteria being variables used to determine whether the services and products of the system meets the needs of the referral (fig. 1, steps 40-170);
- If the referral does not meet system-determined underwriting criteria, seeking an alternative provider for the referral (it is inherent in financial services to underwrite alternative criteria in various situations).
- If the referral becomes engaged, establishing an account for the referral within a marketplace in the transaction management and financial services system ([0006], [0017] and [0019]);
- Providing operations which can be performed by the referral, the operations associated with managing a commercial transaction and capturing data access information associated with what data is accessed by the referral using the provided operations (pages 1-6);

Wilkinson discloses providing a screen display indicating a referring party (paragraphs 8, 21-22, 50, 57). Wilkinson does not disclose where the screen display

indicates an affiliation with a referring party. However, Kleinberg discloses providing a screen display indicating an affiliation with a referring party (paragraphs 9, 14, 16-18, 26, 29, 31). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the referral system as disclosed by Wilkinson to adapt the display indicating affiliation with a referring party as disclosed by Kleinberg. The motivation would be to co-branding a webpage display enables to consumers to know that parties offering referrals are affiliated with one another, creating a seamless interaction on a display such that both affiliates are displayed in a single display screen, thus further promoting the alliance between referring parties.

Wilkinson does not disclose receiving commercial transaction information associated with the referral, where a profile is formed with the data and stored. However, Kleinberg discloses receiving commercial transaction information associated with the referral, where a profile is formed with the data and stored (page 2, paragraph 19; page 4, paragraphs 32 and 40). It would be obvious to one of ordinary skill in the art to modify the providing of referrals as disclosed by Wilkinson to adapt the sending and receiving of commercial transaction information associated with the referral for creating and storage of an associated profile as disclosed by Kleinberg. The motivation would be that when information is gathered by a first party electronically, and a referral to a second party is made, it would be efficient and economical for all parties involved if the information were forwarded to the second party by the first party instead of re-gathering the information by the second party, particularly given the first and second parties are already engaged in relationship through the co-affiliated website.

(10) Response to Argument

The Appellant's arguments have been considered but are not persuasive.

Appellant has argued the 112 rejections, and believes that the claim language as presently provided is clear. However, examiner maintains the 112 rejection and believes that the claim was and remains properly rejected under 35 USC 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The first portion of the 112 rejection relates to the portion of the claim language which states "providing operations which can be performed by the referral, the operations associated with managing a commercial transaction". For purposes of examination, examiner assumed that operations are performed by a party or a party using a computer system. However, it remains unclear how a referral performs operations which have been provided. Providing operations associated with managing a commercial transaction is understood and are well known in the general state of the art. However, as stated above, it is unclear how operations are performed by the referral, as stated in the claim language.

Second, the claim was rejected under 112 for the portion of the claim language which states "capturing data access information associated with what data is accessed by the referral using the provided operations". For purposes of examination, examiner interpreted this to mean capturing data associated with a referral. However, the meaning of the claim language remains unclear. The phraseology "associated with

what data is accessed by the referral" is unclear. As in the first portion, it is unclear how a referral performs operations such as accessing data. And further, the specific language "with what data" as it applies to the remainder of the limitation is unclear.

Appellant disagrees that the teaching of "Providing operations which can be performed by the referral, the operations associated with managing a commercial transaction and capturing data access information associated with what data is accessed by the referral using the provided operations" is taught by Wilkinson as cited by the examiner of being taught on pages 1-6 of the Wilkinson reference.

The examination of these limitations was based on the assumptions made as a result of the 112 rejection as set forth and maintained above, where examiner assumed that operations [associated with managing a commercial transaction related to referrals] are performed by a party or a party using a computer system, and the capturing of data associated with a referral. The limitations were rejected as being taught by pages 1-6 of Wilkinson.

Wilkinson discloses a system, method and instructions on a computer program to carrying out the computerized steps of facilitating referrals amongst parties, where data regarding both the referral party and the party being referred are gathered and stored in a database for further transactions. This is contained in across pages 1-6, though specific sections include paragraphs 18-23 in which a general overview of the system is laid out. Additionally, paragraphs 35-48 go into detail as to the capturing of data that occurs as part of the management of referrals related to commercial

transactions. Paragraph 53 discloses that the invention is conducted using a global computer network in order to facilitate financial transactions between parties, and paragraphs 54-54 discloses that information related to the parties is gathered and stored in order to facilitate referrals for the financial transactions. Paragraphs 57 and 58 additionally disclose the recording of transactions between parties and the recording of screening data used by which a party was rejected by another party in order to provide continued refinement of future referrals.

Therefore, examiner believes that based on the assumptions and interpretations required as a result of the 112 rejections, that Wilkinson discloses “providing operations which can be performed by the referral, the operations associated with managing a commercial transaction and capturing data access information associated with what data is accessed by the referral using the provided operations”.

It is also noted by Appellant that Kleinberg does not address these limitations. While Kleinberg was not used to address these limitations by the examiner, examiner notes that Kleinberg discloses a web based system for facilitating referrals, in which screens indicate affiliations amongst parties (paragraphs 9, 14, 16-18 26, 29, 31) as well as the receipt of commercial transaction information associated with a referral for creation and storage of a profile (paragraphs 19, 32, 40).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jennifer Liversedge/

Examiner, Art Unit 3692

Conferees:

/Kambiz Abdi/

Supervisory Patent Examiner, Art Unit 3692

Vincent Millin /VM/

Appeals Practice Specialist